

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**LUIS ALEXANDER MOLINA,
Complainant,**

and

**VILLAGE OF SOUTH ELGIN
POLICE DEPARTMENT,
Respondent.**

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) **Charge No:2001CF0948**
) **EEOC No: 21BA10233**
) **ALS No: 11892**
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RECOMMENDED ORDER AND DECISION

This matter is before me on scheduled public hearing on the merits of this case, on Respondent's motion to dismiss this case for want of prosecution and on Complainant's attorney's motion to withdraw as legal counsel for Complainant.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on October 30, 2000. The Department filed a Complaint, on behalf of Complainant, with the Illinois Human Rights Commission (Commission) on October 1, 2002, alleging that Respondent subjected Complainant to unlawful discrimination in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*
2. Respondent filed a verified answer to the Complaint on December 16, 2002.
3. A discovery schedule was issued on November 27, 2002, ordering the parties to propound discovery no later than December 18, 2002.

4. Public hearing on the merits of this case was set to begin January 12, 2004. Subsequently, the parties agreed to continue the public hearing to April 12, 2004 and then again to June 28, 2004. On Complainant's motion, the public hearing was again continued until October 5, 2004. On October 5, 2004, Complainant, through counsel, made a motion to continue the public hearing for an indefinite period of time due to Complainant's current incarceration, which rendered him unavailable for public hearing. The motion was granted over Respondent's objections.
5. On March 8, 2005, Complainant, through counsel, filed a motion to continue the public hearing until his expected release from prison in mid-June or July of 2006. Over Respondent's objections, the motion was granted and a status was set for June 29, 2006. The matter was subsequently continued several times due to Complainant's attorney being unable to appear for medical reasons.
6. On October 26, 2007, the matter was again set for public hearing on the merits to begin February 13, 2008. On February 11, 2008, Complainant, through his attorney, filed a motion to continue the hearing because of Complainant's unavailability due to a second incarceration. The motion was granted.
7. On March 25, 2009, the matter was again set for public hearing to begin August 31, 2009. Respondent filed a motion to supplement discovery on April 10, 2009. On April 29, 2009, the motion was granted to allow Respondent to propound written discovery limited to any legal actions Complainant had been involved in since his original deposition on July 21, 2003. Respondent propounded supplemental discovery pursuant to that order on May 14, 2009.
8. On July 15, 2009, the matter was set for a settlement conference with the assistance of a Commission administrative law judge not assigned to hear the case. Both attorneys and Complainant, personally, appeared before Judge Lindt in an effort to settle the matter on August 4, 2009. Settlement was not reached. An order was entered ordering

the parties to appear for status on August 12, 2009. The order specifically ordered Complainant to personally appear on that date.

9. On August 5, 2009, Respondent filed a motion to dismiss for want of prosecution, contending that Complainant had failed to answer supplemental discovery that had been served on him on May 14, 2009. The record showed that Complainant had not served answers to supplemental discovery. On August 12, 2009, Complainant's attorney, Stanley Jakala, filed a motion to withdraw as counsel for Complainant, citing irreconcilable differences. Both attorneys appeared before me on the motions at the August 12, 2009 scheduled status hearing. Complainant did not appear personally, although he had been ordered to do so. An order was issued continuing both motions until the time of the scheduled public hearing on August 31, 2009. The order ordered Complainant to personally appear for the August 31, 2009 public hearing. The Commission served the August 12, 2009 order on Complainant at his address of record.
10. On the scheduled public hearing date, August 31, 2009, both attorneys appeared and offered oral argument on the motions; Complainant did not personally appear.
11. I granted Jakala's motion to withdraw.

DETERMINATION

This case warrants dismissal due to Complainant's failure to appear for the August 12, 2009 status hearing, failure to serve answers to supplemental discovery and failure to appear for scheduled hearing on the merits on August 31, 2009.

CONCLUSION OF LAW

Complainant's conduct has resulted in unreasonable delay of this matter.

DISCUSSION

775 ILCS 5/8A-102(l)(6) of the Act authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party's failure to prosecute his case, appear at a

hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings.

This case has been pending before this Commission since October 1, 2002. This tribunal has continued this matter on several occasions for lengthy periods of time due to Complainant's unavailability for hearing. Now that Complainant is apparently available for hearing, he fails to cooperate with his attorney to answer discovery and he further ignores Commission orders to appear for the scheduled public hearing on the merits of this case. Complainant's conduct warrants dismissal of this matter.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: August 31, 2009

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section